

MOTION FILED
AUG 14 1978

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-1105

ANTHONY HERBERT,

Petitioner,

v.

BARRY LANDO,
MIKE WALLACE & CBS INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE AND BRIEF AMICUS
CURIAE OF TIME INC.**

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**MOTION OF TIME INC. FOR LEAVE TO FILE
BRIEF AMICUS CURIAE**

Time Inc. hereby respectfully moves for leave to file the attached brief *amicus curiae* adopting the views of other *amici* in this case. The consent of counsel for respondents has been obtained. Despite repeated attempts, Time Inc. has been unable to obtain the consent of counsel for petitioner.

As a publisher of magazines, newspapers and books and a producer and supplier of films and television

programming, Time Inc. constantly faces the threat of litigation arising out of material which it disseminates to the public. That ever-present threat, if combined with the enormous litigation costs which would be generated by the type of unlimited discovery authorized by the District Court in this case (the constitutionality of which is here at issue), would have a chilling effect on exercise of the First Amendment freedom of the press. This Court has recognized that "fear" of the "expense" of defending a prolonged litigation can have such an impact. *Time Inc. v. Hill*, 385 U. S. 374, 389 (1967); *New York Times Co. v. Sullivan*, 376 U. S. 254, 279 (1964). Such discovery also constitutes an unwarranted intrusion by the government into the editorial process, a process which this Court has held is protected by the First Amendment. *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241 (1974).

Thus, resolution of the issues presented by this case will have far-reaching consequences for Time Inc. and all those who are providing news and information to the general public. In an action where such issues are presented it is important that the Court have before it a full exposition of the Constitutional questions and of the views of those who will be affected by the ruling. It is for that reason that Time Inc. asks leave of the Court to join the other *amici* news organizations in their submission requesting this Court to affirm the Second Circuit in its reversal of the District Court's refusal to apply the dictates of the First Amendment to attempts to obtain unlimited discovery against a libel defendant.

Respectfully submitted,

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August 11, 1978.

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BRIEF AMICUS CURIAE OF TIME INC.

Time Inc. is in full agreement with the views set forth in the *amicus* brief served July 31, 1978, and filed on behalf of The New York Times Co., et al., and hereby joins in that brief.

August 11, 1978

Respectfully submitted,

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